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SDMS Document ID



1022987



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-L

MAY 29 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas E. McAllister
Vice President, General Counsel and Secretary
ASARCO Incorporated
2575 East Camelback Road, Suite 500
Phoenix, AZ 85016-4240

**RE: Notice of Violation of Consent Decree, United States v. ASARCO Incorporated
(CV 98-3-H-CCL); Demand for Stipulated Penalties**

Dear Mr. McAllister:

The purpose of this letter is to notify ASARCO Incorporated ("Asarco") that it is in violation of the above-referenced consent decree ("Consent Decree") as a result of its failure to provide adequate financial assurance for RCRA corrective action measures. Stipulated penalties have accrued and must be paid by Asarco.

By letter dated May 7, 2002, Asarco informed the United States Environmental Protection Agency ("EPA") that it could not provide financial security as necessary and appropriate to assure completion of its corrective action obligations. This financial assurance is required by Paragraph 95 of the Consent Decree. Section XIII (Stipulated Penalties) of the Consent Decree requires Asarco to pay stipulated civil penalties for non-reporting violations as follows:

<u>Period of Failure to Comply</u>	<u>Penalty</u>
1 st to 14 th day	\$1,000/day per violation
15 th to 30 th day	\$2,000/day per violation
After 30 days	\$3,000/day per violation



For purposes of calculating stipulated penalties, EPA will use the date of Asarco's letter (May 7, 2002) as the first day of noncompliance. Stipulated penalties shall continue to accrue through the final day of noncompliance. As of May 21, 2002, stipulated penalties in the amount of \$14,000 have accrued. Pursuant to Paragraph 184 of the Consent Decree, Asarco is required to pay stipulated penalties by the fifteenth day of the month following the month in which Asarco knew that the violation occurred, and each month thereafter, for so long as the violation continues, together with a letter summarizing the violation(s) for which the payment is made. Asarco's first payment is due by June 15, 2002.

Pursuant to Section XIV of the Consent Decree, payment may be made by forwarding a certified or cashier's check, made payable to "Treasurer, United States of America" to:


Financial Litigation Unit
Office of the United States Attorney
District of Montana
2929 3rd Avenue North, Suite 400
Billings, Montana 59103

Copies of the transmittal letter and check shall be sent to EPA and DOJ.

Pursuant to Paragraph 188 of the Consent Decree, if the stipulated penalties are not timely paid, the Consent Decree shall be considered an enforceable judgement for purposes of post-judgement collection of any unpaid amounts, and interest, in accordance with Rule 69 of the Federal Rules of Civil Procedure and other applicable federal or state authority. Interest shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717.

Should you have any questions, the most knowledgeable person on my staff regarding this matter is Suzanne Bohan, Enforcement Attorney. Ms. Bohan can be reached at (303) 312-6925.

Sincerely,


Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

cc: Susan Zazzali, 8MO
Suzanne Bohan, 8ENF-L



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

MAY 29 2002

To: Suzanne Bohan
8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

303 312 6953

Douglas E. McAllister
Vice President, General Counsel and Secretary
ASARCO Incorporated
2575 East Camelback Road, Suite 500
Phoenix, AZ 85016-4240

RE: Notice of Violation of Consent Decree, United States v. ASARCO Incorporated
(CV 98-3-H-CCL); Demand for Stipulated Penalties

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After 30 days	\$3,000/day per violation

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Browne
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Kendall
w/ change
5/23/02



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For purposes of calculating stipulated penalties, EPA will use the date of Asarco's letter (May 7, 2002) as the first day of noncompliance. Stipulated penalties shall continue to accrue through the final day of noncompliance. As of May 21, 2002, stipulated penalties in the amount of \$14,000 have accrued. Pursuant to Paragraph 184 of the Consent Decree, Asarco is required to pay stipulated penalties by the fifteenth day of the month following the month in which Asarco knew that the violation occurred, and each month thereafter, for so long as the violation continues, together with a letter summarizing the violation(s) for which the payment is made. Asarco's first payment is due by June 15, 2002.

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Should you have any questions, the most knowledgeable person on my staff regarding this matter is Suzanne Bohan, Enforcement Attorney. Ms. Bohan can be reached at (303) 312-6925.

*Insert where to
send payment of
ships.*

Sincerely,

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

cc: Douglas McAllister, Asarco
Susan Zazzali, 8MO
Suzanne Bohan, 8ENF-L

MAY-87-2002 16:48

FROM-



May 7, 2002

Via Facsimile & Certified Mail (Return Receipt Requested)

Ms. Susan Zazzali
RCRA Project Manager
Montana Office
U.S. EPA Region VIII
10 West 15th Street
Suite 3200
Helena, MT 59626

To:
Suzanne Bohan
8ENF-L

From:
Susan Zazzali

303-312-6953

Re: Financial Assurance for East Helena

Dear Ms. Zazzali:

Paragraph 98 of the East Helena Consent Decree requires Asarco Incorporated ("Asarco") to annually demonstrate its financial ability to complete the work required by the Decree in the following year. The annual update is due in January. Asarco made a demonstration using the financial test in January 2002, based on third quarter financial information. EPA raised some questions regarding the amount of work scheduled for this year in a January 30, 2002 letter. In subsequent discussions with Jon Nickel in East Helena, you asked that Asarco get back to you on this issue by May 6, 2002. This letter is in response to your request.

Last week, Asarco received its audited financial statements for year-end 2001. Based on these statements, it does not appear that the demonstration made in January 2002 remains current. We expect that once our complex debt restructuring negotiations are complete, we will again be able to use the financial test to demonstrate assurance at East Helena.

As you are aware, for some months now representatives of the Department of Justice ("DOJ") and the Environmental Protection Agency ("EPA") headquarters office have been negotiating with representatives of Asarco with the goal of developing a framework for reaching both short-term and long-term solutions that will promote Asarco's future viability while ensuring that its environmental obligations are satisfied. These discussions contemplate the extension of deadlines for cleanup work and other environmental projects as well as allowing Asarco to defer some payments for past-cost reimbursement. As a prerequisite for obtaining relief, Asarco has provided extensive company financial information to the government.

MAY-07-2002 16:48

FROM-

T-526 P.003/003 F-701

Susan Zazzali

Page 3


Asarco believes that progress is being made in the discussions and that there is reason to hope that agreement will be reached. Unfortunately, like all complex matters such as this, the process is taking longer than originally thought.

In light of the ongoing discussions with DOJ/EPA headquarters personnel regarding prioritization of remediation work for 2002 given Asarco's limited resources, as well as the issue of security for any work deferred, Asarco is unable to update its financial assurance with respect to the East Helena Consent Decree at this time. Under present circumstances, the financial assurance itself is likely to require a commitment of resources in some form, thus this requirement, along with all other environmental obligations, must be part of the ongoing discussions and ultimate agreement between Asarco and DOJ/EPA.

Asarco appreciates the willingness of EPA and DOJ to work with the company with the goal of reaching an agreement that will allow Asarco to remain viable and meet all of its environmental obligations, including those under the East Helena Consent Decree.

Once the government and Asarco have resolved these issues, we will contact you with additional information. If you have questions or wish to discuss this further, please call me at (602) 977-6507.

Very truly yours,



Douglas E. McAllister

Vice President, General Counsel and Secretary

cc: Jon Nickel
Rich Marcus



Suzanne —
Please share info
with the team.

ASARCO Incorporated
2575 E. Camelback Road, Ste. 500
Phoenix, Arizona 85016-4240

Thanks
CR

FAX Cover Sheet

March 22, 2002

To: Ms. Carol Rushin
Assistant Regional Administrator
US Environmental Protection Agency
Region 8

Phone: (303) 312-6051

Fax: (303) 312-6191

From: Douglas E. McAllister

Phone: (602) 977-6500

Fax: (602) 977-6706

Number of Pages
Including Cover 5
Sheet:

RECEIVED

MAR 22 2002

Office of Enforcement
Compliance & Environmental
Justice

Comments:

The original of the following transmittal will be sent to your attention via U.S. mail.

THE INFORMATION CONTAINED IN THIS FACSIMILE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION, INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (602) 977-6500. THANK YOU.



Douglas E. McAllister
Vice President
General Counsel & Secretary

March 19, 2002

VIA FACSIMILE

Carol Rushin
Assistant Regional Administrator
US Environmental Protection Agency
Region 8
999 18th Street, Suite 500
Denver, Colorado 80202-2466

Dear Ms. Rushin:

Thank you for meeting with Don Robbins, Jon Nickel and me on March 8, 2002 to discuss cleanup matters at East Helena and our efforts to prioritize our remediation work across the country. I appreciated your directness and candor in the meeting. We understand and agree with your view that the individual regions are key players in the process of defining the menu of priority projects to be addressed this year. We still are searching, however, for a way to maintain a global perspective in the process.

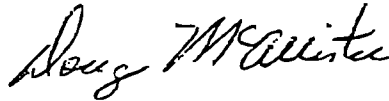
As an example consider the residential soil program. In our discussions with several other regions (e.g. VI, VII, X) Asarco knows that EPA considers lead in soil cleanup to be an important mission. The question arises whether the view of the EPA Montana office regarding the remediation of road aprons and drainageways as an essential component of the cleanup is a view shared by other regions. If so, in this environment of scarce company resources, this work will take dollars away from encapsulating high-risk smelter debris elsewhere. As Asarco continues to work these issues out, we look forward to working with you and your staff to find an approach that will allow Asarco to spend its scarce remediation dollars on the highest priority projects.

I believe Jon, Don and I came away from the meeting with a new view of the criticality that EPA has assigned to the Permeable Reactive Barrier (PRB) project. With the recent concern over arsenic in groundwater at East Helena, Asarco recognizes the need to look at the most likely remedies for dealing with this problem. I understand that during the week of March 25, Jon Nickel and Asarco's contractors will be meeting with Ms. Susan Zazzali and others to discuss groundwater remedies and in particular the PRB project. Asarco is committed to giving support of this project very serious consideration.

Since our meeting with you, we have completed the task of providing financial information to EPA and the Department of Justice (DOJ). Attached for you information is a letter I sent to managers at EPA and DOJ again requesting assistance. We hope we can have a meeting soon with key headquarters and regional personnel to reach agreement on priority work for this year.

Thank you again for your time and effort to help Asarco work through these difficult issues. If I can answer any questions you may have on our progress, do not hesitate to contact me at 602-977-6507.

Sincerely,



Douglas E. McAllister

Enclosures

DEM/km

cc: Suzanne Bohan
John Wardell



Douglas E. McAllister
Vice President
General Counsel & Secretary

March 19, 2002

Via Facsimile

Mr. Bruce Gelber
Section Chief
Environmental Enforcement Section
U.S. Department of Justice

Mr. Barry Breen
Director
Office of Site Remediation Enforcement
U.S. Environmental Protection Agency

Mr. Larry Reed
Deputy Director
Office of Emergency and Remedial Response
U.S. Environmental Protection Agency

Re: ASARCO Incorporated

Gentlemen:

I am writing to again request assistance from your offices in an effort to extend over a longer period of time the financial burden of Asarco's remediation responsibilities in light of Asarco's current financial condition. Last week Asarco completed three days of depositions directed at providing EPA and the Justice Department with the information they requested in order to reach an informed decision with regard to the company. We believe that this week we will be able to complete the production of documents requested by the government. At the end of the depositions we discussed a number of items with David Dain of the Justice Department that we are confident will be fully presented to you. Nevertheless a few major points are of sufficient importance and sensitivity to the company that we wanted to emphasize them to you directly.

Your letter of February 1, 2002, expressed concern that Asarco had not provided sufficient information to enable you to analyze our request. While we did not share that view, Asarco has proceeded to respond promptly and fully to recent requests from the Department of Justice for additional information, including providing detailed information supporting our financial projections, detailed information relating to the proposed transaction involving the Southern Peru Copper Corporation stock, and copies of documents provided to the banks with whom Asarco has been negotiating for relief from its financial obligations. In addition, our witnesses provided three full days of deposition testimony, which included responding on an overnight basis to additional requests for documents and information. We trust we have demonstrated Asarco's cooperation in providing the information that the government wanted to reach a position in this matter. As there is obvious urgency in concluding an agreement with the Government, we are hopeful that the Government does not plan on undertaking additional discovery.

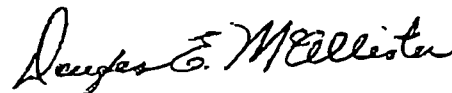
We were somewhat concerned during the depositions with questions asking for the names of various persons outside Asarco, including representatives of the banks with whom Asarco is negotiating, suggesting the possibility that future inquiries might be directed to such persons. We asked Mr. Dain about this at the end of the deposition and he informed us that it is not his present intention to contact the banks and we requested, should that intention change, that he notify us prior to any such contact. In our view, an effort by the Government to contact the banks would not only be unnecessary but could also produce unfortunate consequences, if such a move interfered with Asarco's efforts to negotiate a successful resolution with the banks. Both Asarco and the Government stand to lose should our discussions with the banks fail. We trust you will give careful consideration to the potential consequences before initiating such contacts. In the event such contacts were to occur and to interfere with our discussions with the banks, Asarco, of course, reserves all of its rights.

The information that we have provided to the Government has included proprietary business information of the highest degree of sensitivity. We appreciate the Government's commitment to keep such information confidential. Particularly in light of the fact that there have been some reports in the press concerning Asarco and its posture vis-à-vis the Government, we trust that you will be especially vigilant to ensure that none of the information that we have provided is misused.

Finally, we would be interested in learning as soon as practical what conclusions the Government and its experts have formed on the issues that exist here. We have been forthcoming with our information and trust that the Government will do likewise and provide us with the views of its consultants and experts, so that we can be in a position to respond intelligently and hopefully move forward to a satisfactory resolution of these issues.

Asarco appreciates the Government's willingness to consider our request and looks forward to continued discussions with you.

Sincerely,



Douglas E. McAllister

cc: David Dain, Esq.
Joe Tieger

ASARCOENVIRONMENTAL
PROTECTION AGENCY

FEB 26 2002

MONTANA OFFICE

Susan Zazzali
RCRA Project Manager
Montana Office
US EPA Region VIII
10 West 15th Street, Suite 3200
Helena, Montana 59626

February 25, 2002

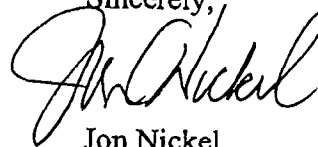
Dear Ms. Zazzali:

Thank you for responding to my February 14, 2002 letter that requests a meeting between Asarco and EPA representatives. Asarco appreciates the opportunity to meet on March 8, 2002 in Denver with EPA Region VIII representatives to discuss the East Helena RCRA and CERCLA implementation schedules.

In my February 14, 2002 letter, Asarco agreed to submit an amended East Helena Consent Decree financial assurance letter to EPA no later than March 6, 2002. As you know, Asarco's near term corrective action responsibilities under the RCRA Consent Decree serve as the basis for this financial assurance letter. Since Asarco will be discussing these responsibilities with EPA on March 8, 2002, it seems appropriate to use the discussions as a guide in completing the financial assurance letter. In our February 25, 2002 telephone conversation, you agreed that this is a reasonable approach. Accordingly, Asarco will be preparing the financial assurance letter on an alternative date agreed upon during our March 8, 2002 meeting. Similarly, Asarco will be responding to EPA's request for Asarco's financial assistance in the passive ground water barrier pilot project following the March 8, 2002 meeting.

Asarco looks forward to a very productive meeting with EPA on March 8, 2002. Please feel free to call me if you have any questions.

Sincerely,



Jon Nickel

Cc: Doug McAllister
Don Robbins
Manuel Ramos

ASARCO Incorporated, P.

Fax No: (406) 227-8897

Post-it® Fax Note	7671	Date	2/26/02	# of pages	1
To	Suzanne Bohem		From	Susan Zazzali	
Co./Dept.			Co.		
Phone #			Phone #		
Fax #	FYI		Fax #		

Asarco

Susan Zazzali
RCRA Project Manager
Montana Office
US EPA Region VIII
10 West 15th Street, Suite 3200
Helena, Montana 59626

Post-It® Fax Note 7671

Date	# of pages 1
To Suzanne Bohan	From Susan Zazzali
Co/Dept.	Co.
Phone #	Phone #
Fax #	Fax #

John says it looks like we should meet here based on this

February 14, 2002

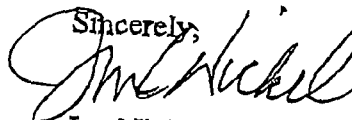
Dear Ms. Zazzali:

I am writing to follow-up our telephone conversation of February 12, 2002 during which time we discussed certain aspects of EPA's January 30, 2002 financial assurance requirements and additional interim measures letter to Asarco. As I explained, Asarco is in the process of preparing a new financial assurance letter that amends Asarco's December 21, 2001 submittal. Asarco will provide the new financial assurance package to EPA no later than March 6, 2002. In addition, Asarco will develop and submit an interim measures workplan that will address the recently identified groundwater contamination upgradient of the City of East Helena. This workplan will be submitted to EPA no later than April 5, 2002.

EPA's January 30, 2002 letter requests that Asarco inform EPA whether it will financially participate in EPA's passive ground water barrier pilot project. EPA estimates that Asarco's share of the project will be \$150,000. EPA is seeking Asarco's commitment to participate in the program by February 22, 2002. Since EPA's request requires a substantial financial commitment by Asarco, I have requested and you have granted a two-week extension to respond. Asarco will respond to EPA's pilot project request no later than March 8, 2002.

Finally, I expressed Asarco desire to promptly meet with EPA Region VIII representatives to discuss the East Helena RCRA and CERCLA implementation schedules. Asarco is committed to having Doug McAllister, Don Robbins, and possibly Manuel Ramos attend the meeting. It is important to Asarco that John Wardell, Scott Brown, and you attend this meeting. Asarco will be able to meet any time during the first full week of March 2002. Please advise me of EPA's open dates and preferred meeting location.

Please feel free to call me if you have any questions. I look forward to our meeting.

Sincerely,

Jon Nickel

Cc: Doug McAllister
Don Robbins
Manuel Ramos

ASARCO Incorporated, P.O. Box 1230, East Helena, MT 59635
(406) 227-7100
Fax No: (406) 227-8897



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

Ref: 8MO

JAN 30 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas V. McAllister, Vice President
and General Counsel
ASARCO, Inc.
2575 East Camelback Road, Suite 500
Phoenix, AZ 85016-4240

Re: Consent Decree Settling U.S. v. ASARCO, Inc.,
(D.Mt., Civil Action No. 98-3-H-CCL)
Financial Assurance Requirements and Additional Interim Measures

Dear Mr. McAllister:

Since entry of the above-referenced consent decree in May 1998 (Consent Decree), the U.S. Environmental Protection Agency (EPA) and ASARCO, Inc. (ASARCO) have had regular, informal contact regarding ASARCO's implementation of the requirements of the Consent Decree. Communications have been frank and productive. ASARCO, EPA, and the community of East Helena have benefitted from the more informed decision-making that has occurred as a result of these communications. As you are aware, however, some time last year ASARCO initiated more general discussions with the U.S. Department of Justice (DOJ) and EPA headquarters about ASARCO's environmental obligations in the United States and ASARCO's alleged deteriorating financial condition. Since ASARCO is presently required to conduct a number of activities pursuant to the Consent Decree, and, apparently there is some misunderstanding on ASARCO's part regarding these activities, the purpose of this letter is to clearly state ASARCO's near-term compliance responsibilities under the Consent Decree.

Our conclusion that ASARCO misunderstands its compliance responsibilities under the Consent Decree results from the financial assurance information dated December 21, 2001, submitted by ASARCO pursuant to paragraph 97 of the Consent Decree. As a preliminary matter, please note that the package is completely inadequate and cannot serve its intended purpose. Because it is not "acceptable" as that term is defined in Part V (paragraph 8) of the Consent Decree it will have to be resubmitted.

In the package ASARCO states that environmental liabilities secured by a financial test for East Helena total one million, three hundred thousand dollars (\$1,300,000). It does not, however, provide any detail on the liabilities. Because direct communications have been effective at solving problems in the past, Susan Zazzali, of my staff, asked Jon Nickel during a meeting on January 8, 2002, to orally provide detail on the work covered by the \$1.3 million. Mr. Nickel informed Ms. Zazzali that the figure reflected ASARCO's obligations under the CERCLA Process Ponds Record of Decision (Process Ponds ROD) and wetlands construction pursuant to the requirement of the Consent Decree for completion of a supplemental environmental project at Lower Lake (SEP).

If Mr. Nickel's explanation is correct, ASARCO has not addressed paragraphs 95 through 107 (pages 47-52) of the Consent Decree which require ASARCO, among other things, to: (1) "establish and maintain financial security as necessary to assure completion of its corrective action obligations as they are identified through the interim measures, RFI, CMS, additional work, and CMI processes" (paragraph 95); (2) estimate and report to EPA the cost of remaining corrective action activities required by the Consent Decree (paragraph 97); (3) identify and maintain the mechanism(s) by which ASARCO is providing the financial assurance; and (4) track changes in circumstances that might cause the failure of the chosen mechanism and change the mechanism when necessary or appropriate.

The above-described financial assurance provisions do not require ASARCO to procure financial assurance for any work other than corrective action pursuant to Part VII of the Consent Decree (including work that may still be required pursuant to the Process Ponds ROD or SEP). While information about these liabilities (agreed to by ASARCO) is important in determining whether some forms of financial assurance for corrective action can be used legally by ASARCO, they have no other bearing on ASARCO's responsibilities pursuant to paragraphs 95 through 107 of the Consent Decree.

ASARCO is required to identify and estimate remaining corrective action liability and explain how adequate financial assurance for these activities is being maintained. Further, ASARCO is mistaken if it believes it has no corrective action responsibilities this year. Based on our review of the Consent Decree, ASARCO's activities to date, and on newly received information, EPA has identified the following corrective obligations for the near-term.

NEAR-TERM CORRECTIVE ACTION RESPONSIBILITIES

This year (2002) ASARCO is required and expected to undertake the following corrective action activities at East Helena pursuant to the Consent Decree: (1) complete and submit a draft RCRA Facility Investigation (RFI) Report; (2) revise and finalize the RFI report after EPA review and comment; (3) continue groundwater modeling efforts; and (4) continue the air sparge pilot tests.

By this letter, EPA is also requiring ASARCO to conduct the following activities this year: (5) resubmit an acceptable financial assurance package pursuant to paragraph 97 of the Consent Decree within thirty (30) days of receipt of this letter; and (6) **within sixty (60) days of receipt of this letter develop and submit an interim measures workplan to address the recently identified groundwater contamination immediately upgradient of East Helena domestic drinking water wells for EPA review and approval (see discussion below).**

Finally, by this letter, EPA is formally requesting that ASARCO inform EPA whether it will participate in the passive ground water barrier pilot project developed by EPA and discussed in detail below. If ASARCO does not adequately commit to participation by February 22, 2002, the project will be cancelled, and EPA will require ASARCO to expeditiously design, install, and operate a more traditional ground water remedy such as a pump and treat or slurry wall system at the facility boundary as an interim measure under paragraphs 34 through 40 of the Consent Decree.

NEW INTERIM MEASURE REQUIREMENT FOR OFF-SITE GROUNDWATER CONTAMINATION

As ASARCO is aware, the RFI investigation has recently clarified the nature and extent of groundwater contamination in East Helena. It is now clear that arsenic concentrations in the intermediate aquifer exceed health based limits immediately upgradient of private wells in East Helena. These private wells are used for consumption and irrigation. This situation must be addressed through an interim measure. **Therefore, pursuant to paragraph 36 of the Consent Decree, an interim measure workplan is due within sixty (60) days of receipt of this letter.** At a minimum the workplan must provide for additional hydrologic characterization of the intermediate aquifer, a regular, frequent sampling program for all potentially-affected active private wells, and a plan for offering to connect those presently using private wells for consumption and irrigation to the East Helena water distribution system, and must provide alternatives for additional action if contamination reaches the wells. EPA will provide initial notification of the contamination to the well owners.

FACILITY BOUNDARY GROUND WATER TREATMENT AND CONTROL INTERIM MEASURE

During discussions with EPA regarding a boundary ground water control interim measure, ASARCO has consistently requested that EPA allow them to explore less proven technologies (i.e. the air sparge system) rather than impose a much more expensive "traditional" ground water remedy. According to ASARCO, the main reason is because of the high costs to operate and maintain such a system. While ASARCO's air sparge system holds promise, it is not likely to be as effective as the more traditional systems, or a potential alternative system identified by EPA.

As you know, to further assist ASARCO's efforts to achieve remedial goals at the facility boundary at a lower cost, EPA has identified a potential alternative system (a "permeable reactive barrier", constructed essentially of iron filings). Since the identified system has not been tried before but holds significant potential, EPA has expended considerable resources to arrange the construction of a pilot scale barrier at the facility in late summer of 2002. We have even secured EPA financing for a portion of the project (EPA will purchase the iron filings and provide sampling and analytical support). The project cannot be undertaken without funding from ASARCO, so EPA has requested that ASARCO assist in the financing of the permeable reactive barrier wall construction activities. EPA's and ASARCO's share of the project is estimated to be \$150,000 each. EPA is hopeful that the permeable reactive barrier will achieve groundwater standards downgradient of the wall. By this letter, EPA is formally requesting that ASARCO inform EPA whether it will assist in financing this pilot project.

Although EPA remains open to alternative methods that are capable of achieving similar or more protective results at the facility boundary, EPA has also concluded that a system must be put in place in the near future to halt the continuing flow of arsenic and other contaminants offsite. Therefore, if ASARCO does not adequately commit to participation by February 22, 2002, the project will be cancelled, and EPA will be compelled to require ASARCO to expeditiously design, install, and operate a system effective at halting the migration of contaminated groundwater at the facility boundary.

The person on my staff most knowledgeable about this matter is Susan Zazzali. Please feel free to contact Ms. Zazzali with any questions. Her direct dial line is (406) 441-1130 (x226).

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

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